

UNITED STATES DISTRICT COURT

Northern District of California

Oakland Division

A. F. ROTHSCHILD FUND,

No. C 11-02760 LB

Plaintiff,

**ORDER RE PLAINTIFF'S OPTIONAL
SUR-REPLY**

v.

DEPARTMENT OF HEALTH AND
HUMAN SERVICES, *et al.*,

Defendant.

On August 5, 2011, pursuant to Federal Rule of Civil Procedure 12(b)(1), Defendants Department of Health and Human Services and Centers for Disease Control and Prevention ("Defendants") filed a motion to dismiss Plaintiff A.F. Rothschild Fund's complaint, which alleges violations of the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552. Motion, ECF No. 13 at 4. In Defendants' reply brief, they discuss new factual developments relating to Defendants' final determination letter dated September 13, 2011. Reply, ECF No. 21 at 3-4. Given that Defendants raised new evidence in their reply brief, Plaintiff is entitled to respond. *See Provenz v. Miller*, 102 F.3d 1478, 1483 (9th Cir. 1996). Accordingly, the court **ORDERS** that Plaintiff may file a three-page sur-reply that addresses Defendants' new evidence by Thursday, September 29, 2011.

IT IS SO ORDERED.

Dated: September 26, 2011



LAUREL BEELER
United States Magistrate Judge